

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CRM-M-22796-2023(O&M)  
Date of decision: 27<sup>th</sup> February, 2024

Kanwar Ripu Daman

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sameer Sachdev, Advocate for the petitioner.  
Mr. A.S. Samra, AAG, Punjab.  
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MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 438 of Cr.P.C.  
seeking anticipatory bail in FIR mentioned below:-

| FIR No. | Dated      | Police Station                     | Sections                                           |
|---------|------------|------------------------------------|----------------------------------------------------|
| 71      | 21.03.2023 | Kharar, District SAS Nagar, Punjab | 376 of Indian Penal Code, 1860 (For short 'IPC');n |

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of written complaint filed by the prosecutrix 'A' (name withheld) alleging therein that she had taken divorce from her husband in the year 2013. She came into contact with the petitioner who is working as a Clerk in the Department of Soil and Water Conservation, Mohali in the year 2016. On the pretext of performing marriage with her, he maintained physical relationship

with her. In the month of April, 2020, he disclosed to her that he was going to UK to meet his elder sister for six months and was having a flight on 01.05.2022. He blocked his number as well as her WhatsApp on 01.05.2022. The complainant made a call to the Brother-in-law of the petitioner and came to know that he had performed marriage in the April, 2022 with one Rachana. On coming to know about the fact that she had come to know about his marriage, he unblocked her number and told her that he would come to meet her in the morning as his mother was very unwell. He came to meet her next day and told her that his wife had left for her parental home and did not want to live with him. He also assured that their relations would remain as it is. Thereafter also, he kept on meeting her on several occasions. In the month of May, 2022, he made physical relations with her. However, whenever she insisted him to perform marriage with her, he took a plea to his mother unwell. She alleged that as on 15.09.2022, he informed her that his sister had gone missing and a DDR was registered at Police Station Kharar in this regard. To help him out, the complainant through the help of some police official, took call details record of the sister of the petitioner and came to know that the name of Rachana wife of the petitioner was also mentioned therein, showing that Rachna was in contact with sister of the petitioner. When she confronted him about this fact, then instead of realising his mistake, he started extending threats to the petitioner by saying that it was she who had got his sister abducted and that he would get an FIR registered against him. She alleged that on this time, that petitioner had been physically exploiting her and she had even undergone an abortion in April

2018. Therefore, she prayed for taking action as against the petitioner. After registration of FIR, investigation proceedings were initiated. The petitioner had moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, SAS Nagar, Mohali but the same was dismissed vide Order dated 18.04.2023.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the allegations as levelled against him are false on the record of the same and are not at all believable. Infact, he had come into contact with the respondent prosecutrix in the year 2017 when he was about 29 years old and was unmarried. It was the prosecutrix who had taken steps through some dating, chattings apps with him to meet him and on her insistence, they had started meetings. In the year 2019, he came to know about the fact that the prosecutrix was maintaining relationship with several other male companions and as he was actually in love with her, therefore, he felt deeply hurt. At that time, the prosecutrix had offered apologies and professed her loyalty towards him but sometime thereafter, he again come to know that the prosecutrix was maintaining multiple relationships and was not even interested to marry him. It is submitted that in view of the act and conduct of the prosecutrix, they have drifted apart in the year 2019.

4. Learned counsel for the petitioner has submitted that the prosecutrix contacted him only on 15.09.2022, when his sister had gone missing and a DDR was got registered by him in this regard. The petitioner had performed marriage in April, 2022 and when this fact came to the

knowledge of the prosecutrix, she had become revengeful and had falsely implicated in this case. It is also argued that the prosecutrix was never subjected to any act of forcible sexual intercourse by the petitioner and there had been no contact between them after the year 2019. It is further submitted that the custodial interrogation of the petitioner is not required. He is ready to join investigation and accordingly, it has been urged that the petition deserves to be allowed.

5. Status report has been filed by respondent No.1-State, as per which, the petitioner has joined investigation in pursuance of orders passed by this Court. It is, however, submitted by learned State counsel that since there are serious allegations against the petitioner, therefore, he does not deserve to be given benefit of pre-arrest bail.

6. The contention as raised by learned counsel for the complainant is that for conducting thorough investigation of the matter, the custodial interrogation of the petitioner is must. He has further submitted that after availing benefit of interim bail in this case, he has been extending threats to the prosecutrix and therefore, there is likelihood of his misusing concession of bail. With these broad submissions, it is urged that the petition filed by him does not deserve to be allowed.

7. I have heard learned counsel for the petitioner, complainant and learned State counsel at considerable length and have gone through the record carefully.

8. Admittedly and evidently both the parties are major. They came into contact with each other in the year 2016. The case of the prosecutrix is

that the petitioner had maintained physical relations with her on the pretext of performing marriage but in April, 2022, he performed marriage with someone else. The offence of rape is defined under Section 375 of IPC and sets out certain circumstances. Relevant for the purpose of this case is the circumstance that a male subjecting a female to sexual intercourse without her consent, commits offence of rape. As per Explanation-2 of Section 375, 'consent' means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in the specific sexual act. It will also be relevant to refer to Section 90 of IPC, as per which a 'consent' given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception, is not consent.

9. In the instant case, the allegations in the FIR even if taken to be true on the face of the record do not *prima facie* make out a case of subjecting the prosecutrix to sexual intercourse by the petitioner without her consent. So far as, the allegations that he had made promise to marry her is concerned, it is equally well settled that there is a distinction between the false promise given on the understanding by the maker that it will be broken and the breach of promise which is made in good faith but subsequently not fulfilled, in the context of a promise to marry. Reliance in this regard can be made on '*Parmod Suryabhan Pawar Vs. State of Maharashtra 2019 (9) SCC 608*', wherein it was observed that where the promise to marry was false and the intention of maker at the time of making the promise itself was

to deceive the women to convince her to engage in sexual relations and not to abide by the promise, then there was “misconception of fact” that vitiated the woman’s “consent”. To hold a promise of marriage to be false promise, it has to be proved that such promise was given in bad faith with no intention of being adhered to at the time, when it was given. In the instant case, the relationship between the parties had started in the year 2016-17. The prosecution has not brought any material on record to prove that from the year 2019 till May, 2022, the parties were in contact with each other and as such, the allegations as made by the petitioner that he had broken up with the prosecutrix in the year 2019 cannot be ignored.

10. On the basis of the allegations as levelled in the FIR, it appears to be a *prima facie* case of consensual relationship between the parties. However, it is for the trial Court to decide on the basis of evidence to be produced before it as to whether the petitioner had been committing rape upon victim or there was any breach of promise to marry on his part. The petitioner has joined investigation. His custodial interrogation is no more required. Taking into consideration all facts and circumstances of the case, in my considered opinion, the order of interim bail as granted to the petitioner on 08.05.2023 deserves to be made absolute, the petition is allowed and the petitioner is ordered to be admitted to be bail, subject to following conditions:-

- (i) The petitioner shall not influence/intimidate or try to meet the prosecutrix, shall not visit their house or try to influence any other witness of the case.

- (ii) the petitioner shall cooperate with the investigation and shall appear before him as and when required.
- (iii) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any Police Officer.
- (iv) he shall not commit any similar offence while on bail.

11. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.
12. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.
13. Since the main petition has been disposed of, pending application if any is rendered infructuous.

[MANISHA BATRA]  
JUDGE

27<sup>th</sup> February, 2024  
Parveen Sharma

1. Whether speaking/ reasoned

2. Whether reportable

: Yes / No

: Yes / No